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Vedder Price Kaufman & Kammholz
222 N. LaSalle Street
Chicago, IL 60601

EXAMINER

CHUKWURAH, NATHANIEL C

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,505	Applicant(s) MYERSCOUGH, MARTIN	
	Examiner NATHANIEL C. CHUKWURAH	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/8/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claims 16, 28 and 30 are objected to because these claims are repeat of what have been claimed.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, recites “and/or” in line 6. It is unclear whether applicant is claiming different size and shape, different size or shape.

Claim 7, line 7 and claim 17, line 6 and claim 31, line 5 recites the same thing.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

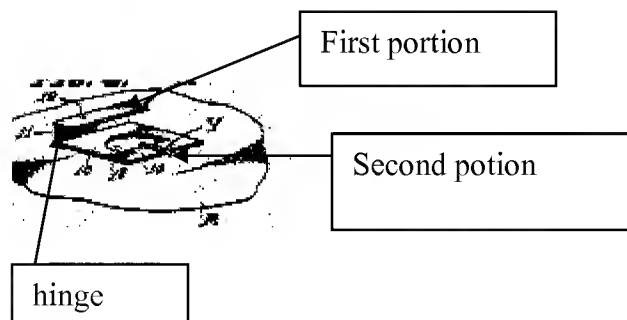
5. Claims 1-20, 23, 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (US 2,886,815).

With regard to claim 1, Young discloses a fastening device (Fig. 1) for joining items as

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shown in Figure 4, comprising: a magazine (G) holding at least one tab (X) having a first portion with a free end, a second portion with a free end and a hinge, the first portion and said second portion being joined along the hinge such that the free ends of the first portion and the second portion are biased away from each other because it is made of spring, the first portion having a different size to the second portion, the magazine (G) includes an opening through which the tab (X) is dispensed, the opening includes a retainer (42) for retaining the second portion of the tab from moving in a first direction whilst allowing the first portion of the tab to move in the first direction, the tab being removable from the magazine in a second direction generally perpendicular to the first direction to a fastening position, and a fastening mechanism (25) for driving a fastener (Y) to join the tab and the items to be joined.

See the Figure below.



With regard to claim 2, Young's fastener is a staple (Y).

With regard to claim 3, Young's fastener is in the form of a stitch.

With regard to claim 4, Young's mechanism (retainer 42) is provided for selectively preventing first portion of the tab from passing through the opening of the magazine (G).

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With regard to claim 5, Young's magazine comprises a mechanical means such as an pressure actuated considered to be equivalent claimed mechanical or electronic means to close the first opening in the magazine (G).

With regard to claim 6, Young's magazine may be removed from fastening device when tab is not required by disconnecting the magazine from the stapling gun.

With regard to claim 7, Young's magazine is being arranged to hold at least one tab (X), having a first portion with a free end, a second portion with a free end and a hinge, the first portion and said second portion being joined along the hinge such that the free ends of the first portion and the second portion are biased away from each other because it is made of spring, the first portion having a different size to the second portion, the magazine (G) includes an opening through which the tab (X) is dispensed, the opening includes a retainer (42) for retaining the second portion of the tab from moving in a first direction whilst allowing the first portion of the tab to move in the first direction, the tab being removable from the magazine in a second direction generally perpendicular to the first direction to a fastening position, and a fastening mechanism (25) for driving a fastener (Y) to join the tab and the items to be joined. See the Fig. above and Figure 1.

With regard to claim 8, Young's retainer is in the form of one or more projections or lips that extend into the opening of the magazine (G) for retaining the second portion of the tab (X).

With regard to claim 9, Young's projection (42) is arranged in a position such that, when the first portion and the second portion of the tab (X) are adjacent each other, the projection (42) extends over an area of the second portion of the tab not covered by the first portion as shown Figure 5.

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With regard to claim 10, Young's tabs (X) contained in the magazine are biased towards the opening of the magazine by the spring (63) and follower (62).

With regard to claim 11, Young's resilient biasing means is a spring (63).

With regard to claim 12, Young's biasing means is a coil spring (63).

With regard to claim 13, Young's magazine is considered formed from a metal material.

With regard to claim 14, Young's magazine includes an openable side through which the tabs (X) may be inserted.

With regard to claim 15, Young's magazine is formed of a transparent material as shown in Figure 1.

With regard to claim 16, Young discloses a magazine as claimed.

With regard to claim 17, Young discloses a tab (X) comprising: a first portion with a free end, a second portion with a free end, and a hinge, the first portion and the second portion being joined along the hinge such that the free ends of the first portion and said second portion are biased away from each other because it is made of spring, the first portion having a different size to the second portion such that the second portion of the tab can be retained from moving in a first direction whilst allowing the second portion of the tab to move in the first direction, the tab being removable from a magazine (G) in a second direction generally perpendicular to the first direction. See Fig. above and Figure 1.

With regard to claim 18, Young's first portion of the tab is shorter than the second portion of the tab as shown in Fig. above.

With regard to claim 19, Young's first portion of the tab shows a smaller portion (width) as shown in Figure 4 than the second portion of the tab.

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With regard to claim 20, Young's hinge of the tab is a fold between the first portion and the second portion of the tab as shown in Figure 4.

With regard to claim 23, Young's tab is considered cut from a sheet of material.

With regard to claim 26, Young shows a plurality of tabs (X Fig. 2) being releasably fastened together so that they may be handled conveniently as a single unit.

With regard to claim 27, Young's plurality of tabs (X Fig. 5) are held together by an (holding means col. 1, line 64) considered to be encircling band.

With regard to claim 28, Young shows a plurality of tabs as shown in the rejection above.

With regard to claim 29, Young shows magazine having an internal structure shaped to correspond to tabs, and thereby maintain the tabs in alignment as shown in Figure 5.

With regard to claim 30, Young shows a fastening device and a tab as in claimed limitation.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21-22 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young in view of McGuinness et al. (US 5,791,546).

With regard to claim 21, Young discloses the claimed subject matter to the degree that it does show tab formed of synthetic plastic material.

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McGuinness teaches tab (38) formed from synthetic plastic material such PVC as discussed in column 3, line 37. Plastic material is considered cost effective and easy to shape.

In view of the teaching of McGuinness, it would have been obvious to one skilled the art to modify Young's tab by providing tab formed from plastic material such PVC in order to provide cost effective and easy to shape material.

With regard to claim 22, modified Young includes a tab formed from polypropylene (synthetic which encompasses polypropylene).

With regard to claim 24, modified Young shows tab having a thickness of between about 0.25mm and 0.50mm satisfying the thickness of between 0.1 mm and 0.75mm.

With regard to claim 25, while modified Young has not mention that a plurality of being provided with printed matter so as to form labels, printed matter is known in the art as label.

However, it would have been obvious to one skilled in the art to provide Young with such printed matter for the purpose of attaching label to article.

8. Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young in view of McComb (US 3,581,350).

With regard to claim 31, Young shows a method of joining items comprising: providing a tab (X) having a first portion with a free end, a second portion with a free end, and a hinge (see Fig. above), the first portion and the second portion being joined along the hinge such that the free ends of the first portion and said second portion are biased away from each other because it is made of spring, the first portion having a different size to the second portion, restraining the second portion of the tab from moving in a first direction whilst allowing the first

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portion of the tab to move in the first direction, providing a number of items (R) to be stapled between the free ends of the first portion and the second portion of the tab (X), and moving the items as shown in Figure 6 in a second direction generally perpendicular to the first direction to abut against the join between the first portion and the second portion of the tab, and continuing the movement of the items to be joined to remove the tab in a second direction generally perpendicular to the first direction.

Young, to a degree does not show passing a fastener through the first portion and the second portion of the tab sandwiching the items to be joined. McComb teaches the method of passing a fastener through the first portion and the second portion of the tab sandwiching the items to be joined as shown in Figure 6 for the purpose of providing a firm hold on the item stapled.

In view of the teaching of McComb, it would have been obvious to one skilled the art to modify Young to include passing a fastener through the first portion and the second portion of the tab sandwiching the items to be joined for the purpose of providing a firm hold on the item stapled.

With regard to claim 32, modified Young shows the claimed method of passing a fastener through the first portion and the second portion of the tab sandwiching the items to be joined (McComb).

Conclusion

9. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHANIEL C. CHUKWURAH whose telephone number is (571)272-4457. The examiner can normally be reached on M-F 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathaniel C. Chukwurah/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721

6/19/2009